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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Letter dated 11 April 2002 from the Permanent Representative of Malaysia to the United Nations Office at Geneva in his capacity as Chairperson of the Organization of the Islamic Conference in Geneva addressed to the Chairperson of the fifty-eighth session of the Commission on Human Rights

I have the honour to transmit to you, in my capacity as the Chairperson of the Organization of the Islamic Conference in Geneva, a statement adopted by the OIC Contact Group on Jammu and Kashmir, along with a memorandum presented to the Group by the True Representatives of the Kashmiri people. The meeting was held at the United Nations Office in Geneva on 9 April 2002.

I would be grateful if you could kindly have the statement* and the memorandum* circulated as official documents of the fifty-eighth session of the Commission on Human Rights, under agenda item 5 and 9.

(Signed) Rajmah HUSSAIN
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only.

Annex I

Statement on Jammu and Kashmir adopted by the OIC Contact Group on Jammu and Kashmir at its meeting during the 58th Session of the United Nations Commission on Human Rights in Geneva, April 9 2002

The OIC Contact Group on Jammu and Kashmir which met on the occasion of the 58th Session of the United Nations Commission on Human Rights, expressed its deep concern over the situation of Human Rights in Jammu and Kashmir. The Group noted reports of intensification of gross and consistent human rights violations.

The Meeting was guided by all OIC Summit and Ministerial Declarations and Resolutions on Jammu and Kashmir.

The Meeting recalled UN Security Council resolutions 47 (1948), 51 (1948), 80 (1950), 91 (1951) as well as the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949 that stipulate that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

The Meeting called for an immediate end to the gross and consistent violations of human rights and, in this regard, reiterated the determination of the OIC Member States to continue their efforts for the full protection of the fundamental human rights of the people of Jammu and Kashmir. It called for grant of access to international human rights bodies, the special mechanisms of CHR, and international media in Jammu and Kashmir to regularly monitor the Human Rights situation.

The Meeting also expressed its concern at attempts to misuse the tragic events of September 11 to further intensify the suppression of the struggle for self-determination of the Kashmiri people by denigrating it as terrorism. It noted with concern the tense security situation in South Asia resulting from the mobilization of armed forces in battle ready positions on Pakistan's border and also the Line of Control. It appreciated the restraint exercised by Pakistan in this regard and called for urgent reversal of the military mobilization and immediate commencement of a dialogue between Pakistan and India.

The Meeting expressed support for Pakistan's repeated offer of talks to India. The Contact Group conveyed their support for the efforts of the Government of Pakistan to resolve through a, substantial and meaningful dialogue the Jammu and Kashmir dispute which is the basic cause of tension between India and Pakistan.

The Meeting affirmed once again the commitment of the OIC to promote a just and peaceful solution to the Jammu and Kashmir dispute in accordance with the United Nations resolutions and expressed their resolve to seek the effective realization of the right of self-determination of the Kashmiri people.

The Meeting took note of the Memorandum presented by the True Representatives of the Kashmiri people to the OIC Contact Group and decided to transmit it, along with the Statement adopted at the meeting, to the 58th UNHCR to be adopted and circulated as official documents.

Annex II

Memorandum presented by the True Representatives of the Kashmiri people to the OIC Contact Group on Jammu and Kashmir on April 9, 2002 during the 58th Session of the UNCHR at Geneva

We, the True Representatives of the oppressed Kashmiri people:

Recalling the relevant resolutions of the United Nations Security Council and also United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, upholding the right to self-determination of the people of Jammu and Kashmir;

Recalling all resolutions relating to Jammu and Kashmir of the OIC Summit and Ministerial Conferences;

Also recalling the historic Special Declaration of the Extraordinary Session of the Islamic Summit Conference on Jammu and Kashmir adopted on 23 March 1997;

Welcoming the reaffirmation of the commitment of the OIC and its Member States as reflected in the Doha Summit Declaration of November 2000 and the 25th, 26th 27th and the 28th Islamic Conferences of Foreign Ministers held in 1998, 1999, 2000 and 2001 to promote a just and peaceful solution of the Jammu and Kashmir dispute in accordance with the relevant resolutions of the United Nations Security Council and their support to the fundamental human rights of the Kashmiri people, including their right to self-determination;

Expressing deep gratitude to the OIC and its Member States for their unequivocal support for the Kashmiri people's right to self-determination and for their condemnation of the repression and massive human rights violations in Indian occupied Jammu and Kashmir;

Rejecting past, present and future Indian efforts to impose sham elections, as they are not a substitute for the freely exercised right of the Kashmiri people to self-determination;

Categorically rejecting any Indian offer of talks on the future of Jammu and Kashmir under the framework of the Indian Constitution;

Reaffirming that any agreement on Jammu and Kashmir should be on the sole basis of the ascertainment of the wishes of the Kashmiri people as enshrined in the relevant UN Security Council Resolutions;

Strongly Condemning the serious crimes and atrocities, massacres, extra-judicial killings, custodial deaths, reprisal killings, arbitrary detentions, torture, burning of houses, villages and townships and the use of rape as an instrument of suppression by the

Indian Government through its military and para-military personnel and mercenaries which have claimed 80,000 innocent lives in Jammu and Kashmir during the last thirteen years and caused 20,000 women to be widowed, 100,000 children orphaned, 8000 women raped and 100,000 shops and houses burned;

Reaffirming the Kashmiri people's support for multi-ethnicity and multiculturalism as essential ingredients of life in Jammu and Kashmir;

Deploring the massacre of 35 Sikhs in Chattisinghpura in March 2000; the Indian attempt to implicate in the dastardly and criminal act innocent Muslim civilians, who were killed in a fake encounter with the Indian forces; and the recent attempt by Indian authorities to tamper the DNA samples taken from the relatives of the Kashmiris killed by the Indian forces to avoid responsibility of falsely implicating and murdering in cold blood innocent Kashmiri Muslims in the Chittisinghpura tragedy;

Condemning the rejection by the Indian Government of the demand for an impartial investigation into the killings at Pahalgam on August 1, 2000, most of which resulted from firing by the Indian forces;

Denouncing India's use of mercenaries and renegades for killing Kashmiris and India's efforts to exploit these incidents for propaganda against the Kashmiri freedom struggle and Pakistan;

Further condemning the destruction and desecration of the Islamic holy places in occupied Kashmir by Indian forces, and the killing and persecution of Imams;

Strongly Condemning the defamatory statement by a BJP Member of the Indian Parliament about the Holy Relic in the Dargah of Hazrat Bal which greatly hurt the feelings of the Kashmiri Muslims;

Deploring the September 11 terrorist attacks in the United States and the huge loss of innocent lives and destruction of property;

Condemning the attack on the "State legislature" in Srinagar on 11 October 2001 and the attack on the Indian Parliament on 13 December 2001;

Denouncing India's efforts to use these incidents to further increase its repression of the Kashmiris and for propaganda against the Kashmiris and Pakistan;

Reiterating the denunciation by Kashmiris of terrorism in all its forms and manifestations including state sponsored terrorism;

Rejecting the Indian propaganda attempting to denigrate the Kashmiri freedom struggle by equating it with terrorism;

Welcoming the efforts undertaken by the Government of Pakistan to eradicate extremism and terrorism;

Strongly Condemning the arrest of senior APHC leader Yasin Malik under the draconian Prevention of Terrorism Act (POTA) on trumped up charges;

Also condemning the attack by a militant Hindu leader on senior APHC leader Abdul Ghani Lone on 1 April 2002;

Expressing deep concern over the Indian military mobilization and deployment of forces in battle positions as well as the threat of use of force against Pakistan as a means of coercion to compromise its support to legitimate cause of the people of Jammu and Kashmir;

Expressing further concern at the possibility of a war between India and Pakistan as a result of the Indian attempts at blackmail which could result in apocalyptic consequences;

Appreciating the restraint exercised by Pakistan in the face of Indian military mobilization and provocative rhetoric;

Welcoming Pakistan's offer to India to resume dialogue on Kashmir and other outstanding issues;

Condemning the unprovoked and indiscriminate shelling by Indian Army across the Line of Control killing and injuring innocent civilians and causing damage to property;

Supporting the efforts of the Government of Pakistan in seeking a peaceful resolution of Jammu and Kashmir dispute, keeping in view the aspirations of the Kashmiri people, through all possible means including a substantive meaningful and sustained dialogue with the Indian Government;

Reaffirming the right to freedom of movement of Kashmiri leadership as a fundamental human right to which they are entitled under international covenants;

Expressing serious concern at the continued denial by the Indian Government of travel documents to the APHC delegation, which would enable it to visit Pakistan.

Resolve that:

a) The people of Jammu and Kashmir shall continue their just and heroic struggle for the realization of their right to self-determination as promised to them by the international community through the United Nations Security Council resolutions;

b) The will of the people of Jammu and Kashmir expressed through a free and impartial plebiscite conducted under the auspices of the UN constitutes the sole basis for the settlement of the Jammu and Kashmir dispute.

Urge the members of the OIC to:

i) Call upon India to accept Pakistan's proposal for a meaningful and substantive dialogue on the core issue of Jammu and Kashmir.

ii) Impress upon the Indian government to desist from staging and imposing a farcical political process in Indian occupied Kashmir.

iii) Once again remind the Indian government that in Resolutions 91 (1951) and 122 (1957), the UN Security Council unambiguously affirmed that 'any action that (the Indian Government) may have taken, or might attempt to take to determine the future shape and affiliation of (Jammu and Kashmir) would not constitute a disposition of the State'.

iv) Reject past, present and future Indian efforts to impose sham and farcical elections on the people of Jammu and Kashmir since these are not a substitute for the free and fair plebiscite under UN auspices prescribed by the Security Council as the means through which the Kashmiri people are to exercise their right to self-determination;

v) Demand that India withdraw its army of occupation from Jammu and Kashmir and fulfill its promise of holding a free and fair plebiscite in Jammu and Kashmir under UN auspices in accordance with the relevant UN Security Council resolutions and the United Nations Commission on India and Pakistan resolutions of 13 August 1948 and 5 January 1949.

vi) Call upon India to honour the commitments made by it in order to secure the early settlement of the Jammu and Kashmir issue on the basis of the wishes of the Kashmiri people as stipulated in the relevant UN Security Council resolutions.

vii) Stress upon the Indian government to put an end to state terrorism; desist from genocidal repression that is tantamount to ethnic cleansing in Jammu and Kashmir; halt the practice of 'crackdowns' on Kashmiris villages and urban areas; remove military pickets and troops from Kashmiri towns and villages and fully respect the religious sentiments of the Kashmiri people.

viii) Call upon India to allow impartial, neutral and international third party inquiries to determine responsibility for the killing of civilians in occupied Kashmir in several attacks that have taken place in recent years.

ix) Call upon India to accept the demand made by the True Representatives of the Kashmiri people for holding tripartite talks to resolve the long-standing dispute of Jammu and Kashmir in accordance with the relevant resolutions of the UN Security Council.

x) Urge India to repeal the Armed Forces (Special Powers) Act 1958, Jammu and Kashmir Disturbed Areas Act 1992, and Jammu and Kashmir Public Safety Act 1978 in IOK and The Prevention of Terrorism Act (POTA) (2002), as these draconian laws give the security forces wide powers of arrest and detention with virtual impunity to commit human rights violations.

xi) Reject Indian attempt to misuse the September 11, tragedy to suppress the legitimate Kashmiri freedom struggle by denigrating it as terrorism, and condemning the campaign of intensified repression unleashed by India against the Kashmiri people and leadership;

xii) Further call upon India to allow access to major Human Rights NGOs such as Amnesty International, Human Rights Watch to monitor and document the human rights situation in Jammu and Kashmir.

xiii) Urge the United Nations to take steps for the appointment of a Special Rapporteur on Jammu and Kashmir by the Human Rights Commission.

xiv) Communicate again to the Government of India its readiness to send its fact-finding and good offices missions to Jammu and Kashmir.

xv) Urge the United Nations to hold a plebiscite in Jammu and Kashmir, without further delay, in accordance with the UN Security Council resolutions.

xvi) Support that leaders of All Parties Hurriyet Conference and Kashmiri Human Rights activists should be declared as "Internationally Protected Persons".

xvii) Support the right of Freedom of Movement of Kashmiri people and the leaders of All Parties Hurriyet Conference and seeks their guaranteed protection.

xviii) Extend all possible humanitarian assistance to the suffering people of Kashmir.

xix) Encourage the OIC to play a more active role, including extending humanitarian help to Kashmiri widows and children.

Request the OIC Secretary General to:

I) Appoint a Special Representative on Jammu and Kashmir in accordance with the OIC resolutions, adopted at the 27th ICFM in Kuala Lumpur, and the 28th ICFM at Bamako without further delay and ask him to proceed him on a fact-finding mission to Kashmir.

ii) Convey the OIC resolutions on Jammu and Kashmir dispute to the Indian Government, the UN Secretary General, the governments of P-5 and President of the UN Security Council in order to convey the Islamic world's concern over the situation in Jammu and Kashmir and seek their role in its resolution.

iii) Include the Kashmir dispute in the agenda of OIC's dialogue with regional and international organizations such as the UN and EU.

Appeal to all peace loving people and the nations of the world in general, and the Islamic Ummah in particular, to, on the one hand, urge the Indian Government to put an end to the egregious violations of the human rights of the Kashmiris, and on the other, help and support the people of Jammu and Kashmir in their struggle for the realization of their right to self-determination as promised to them under the relevant UN Security Council Resolutions.

Requests the OIC to communicate this memorandum from the true representatives of the Kashmiri people to the United Nations High Commissioner for Human Rights.